

RUDOLPH LAW FIRM

Gary B. Rudolph, Esq. SBN 101921

864 Grand Avenue – P. O. Box 433

San Diego, California 92109

(858) 412-6822 [telephone and facsimile]

(619) 517-7641 [cellular]

gary@dolphlaw.com

Attorney for Plaintiff Gerald H. Davis, Chapter 7 Trustee

Shirlyn Daddario SBN 127148

Attorney at Law

6960 Flanders Drive

San Diego, California 92121

(858) 225-3839 telephone

(858) 450-9177 facsimile

daddario@geoconinc.com

Proposed Special Counsel for Plaintiff Gerald H. Davis,
Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re

STEEL FRAME BUILDING SYSTEMS, INC.,)

Debtor

Case No. 07-06112-A7

Adv. Proc. No. 09-90417-LA

GERALD H. DAVIS, TRUSTEE,

Plaintiff

**EX PARTE APPLICATION FOR
AUTHORITY TO RETAIN SPECIAL
COUNSEL**

v.

**THE ASHLEY 1989 TRUST UNDER
DECLARATION OF TRUST DATED
AUGUST 11, 1989, MELANIE JOY KELLY,
SUCCESSOR TRUSTEE; JAMES L. DALEY,
an individual; JULIA LYNN KIRBY,
an individual; SHAWN SETTERBERG,
an individual; and MICHELLE SETTERBERG,
an individual,**

Defendants.

Ex Parte Application for Authority to Retain Special Counsel

1 TO: THE HONORABLE LOUISE ADLER, U.S. BANKRUPTCY JUDGE:

2 Gerald H. Davis, Chapter 7 Trustee in the matter of *In re: Steel Frame Building Systems* and
3 plaintiff in the adversary action entitled *Gerald H. Davis, Trustee v. The Ashley 1989 Trust Under*
4 *Declaration of Trust Dated August 11, 1989, Melanie Joy Kelly, Successor Trustee, et. al.*, respectfully
5 applies to this court for authority to retain Special Counsel as follows:

6 1. On October 31, 2007, Debtor Steel Frame Building Systems filed its Chapter 7 petition in
7 this district, the day before Steel Frame Building Systems' President was to have appeared for a debtor's
8 exam pursuant to the order of the Honorable Rafael A. Arreola. The cause of the filing was to prevent
9 the debtor's exam and execution by Creditors Darren Tharp and Dominique Tharp on a Judgment
10 entered August 30, 2007 against Steel Frame Building Systems in the sum of \$614,007.97 after binding
11 arbitration before the Honorable Robert May, Retired, in the matter of *Darren Tharp and Dominique*
12 *Tharp v. James L. Daley and Steel Frame Building Systems, Inc.* JAMS Case Number 1240017908. on
13 November 1, 2007, the day after filing the Chapter 7,

14 2. During investigation and formal discovery, it was revealed that Debtor Steel Frame
15 Building System, Inc.'s [hereinafter "SFBS"] President, James L. Daley, had been involved in self-
16 dealing, and had taken approximately \$575,777.00 in monetary assets out of SFBS for his own personal
17 uses and to avoid payment of those sums on the Judgment against SFBS by Creditors Darren and
18 Dominique Tharp, [hereinafter "Tharps"]. In his §2004 Examination, dated June 22, 2009, James Daley
19 admitted he had taken the approximate sum of \$225,000 in cash out of SFBS;

20 3. On January 11, 2007, approximately 3 days after the tentative ruling by Judge May was
21 issued, James Daley created a note in the sum of \$558,000 in favor of himself, his son, Shawn Setterberg
22 and daughter-in-law, Michelle Setterberg. James Daley holds a 75% interest in the note and the
23 Setterbergs hold a 25% interest in the note. There is no apparent consideration for this Note and Deed of
24 Trust, other than to deplete the assets of Debtor SFBS to avoid the payment of the judgment to the
25 Tharps;

26 4. Between the note for \$558,000 created as set forth in paragraph 3 above, and the
27 approximately \$575,000 James Daley took out of Debtor SFBS, it appears Daley owes approximately
28

Ex Parte Application for Authority to Retain Special Counsel

1 \$993,500 to the SFBS bankruptcy estate. All of these monies were taken out of Debtor SFBS within the
2 statutory two year window prior to Debtor SFBS filing for Chapter 7 bankruptcy;

3 5. On August 20, 2007, Daley obtained a \$350,000 loan from the Julia Kirby Trust against
4 the Debtor SFBS property;

5 6. The \$350,000 taken against the assets of Debtor SFBS was not listed in the Schedules
6 filed in this Chapter 7 proceeding;

7 7. James Daley never disclosed that he had taken the loan for \$350,000 against the assets of
8 Debtor SFBS in the Schedules filed with the Bankruptcy Court. He only confessed he had taken the
9 \$350,000 out of Debtor SFBS when confronted by Creditors Tharp with the Deed of Trust at the first
10 §341 meeting of creditors;

11 8. Through investigation, it has been ascertained that of the \$350,000 loan proceeds
12 obtained by Daley on or about August 20, 2007, approximately \$140,000 was used to pay off an existing
13 note in favor of the Julia Kirby Trust and against the SFBS property. Daley had refused to disclose
14 where the remaining \$210,000 went or what he did with it until forced to in the §2004 examination;

15 9. Shirlyn Daddario has assisted in developing evidence that has led, in part, to Trustee
16 Gerald H. Davis filing an adversary action, currently before the Court through the First Amended
17 Complaint for Avoidance and Recovery of Preferential and Fraudulent Transfers of Property and For
18 Turnover and Other Relief [11 USC §§542, 544, 547, 548, 550 and California Civil Code §§3439.04 and
19 3439.05];

20 10. Trustee Davis believes that there are numerous issues relating to the adversary
21 proceeding that require competent counsel to assist and advise him. In that Ms. Daddario has already
22 assisted in discovering assets that are owed by defendants in the Trustee's adversary action to the SFBS
23 bankruptcy estate, it is believed Ms. Daddario's knowledge of the case will be of particular value to the
24 Trustee. Trustee Davis proposes to employ the Law Offices of Shirlyn Daddario, by Shirlyn Daddario
25 as Special Counsel in this proceeding for purposes including, but not limited to, the following:

26 a. To advise and consult with Trustee Davis concerning questions arising in the conduct of
27 the prosecution of the adversary proceeding;

28

1 b. To advise and consult with Trustee Davis concerning questions arising in the conduct of
2 Defendants James Daley, Michelle and Shawn Setterberg, and Julia Kirby in converting funds and
3 preferential transfers from the debtor estate;

4 c. To advise and assist Trustee Davis in vigorously pursuing, tracing and recovering assets
5 converted by Defendants Daley and Setterberg for their personal use and for the purpose of depleting
6 all assets of the Debtor SFBS to avoid payment to creditors of the estate;

7 d. To appear in, prosecute, defend or represent the Trustee's interests in suits arising and
8 related to the adversary proceeding, including future potential litigation;

9 e. To investigate and prosecute through the adversary proceeding, turnover, preference and
10 other similar actions arising under the estate's avoiding powers; and

11 11. The Trustee believes that the Law Offices of Shirlyn Daddario and Shirlyn Daddario
12 possess the necessary expertise and familiarity with litigation, civil and bankruptcy procedure, and the
13 duties and affairs of the Trustee, which will enable her to represent him in prosecuting the adversary
14 action. The experience of Shirlyn Daddario is set forth in the accompanying declaration;

15 12. The Trustee believes that the Law Offices of Shirlyn Daddario are disinterested and do
16 not hold or represent any interest adverse to him or to the bankruptcy estate;

17 13. The Law Offices of Shirlyn Daddario and Shirlyn Daddario have received no retainer or
18 compensation in this matter;

19 14. The signed fee agreement between Trustee Davis and Shirlyn Daddario is lodged with
20 this Court as Exhibit 1, which is filed herewith and incorporated herein;

21 15. The hourly rate charged by Shirlyn Daddario for this Chapter 7 and Adversary
22 proceeding are as follows:

23 i. Shirlyn Daddario	\$250.00
24 ii. Law clerk	\$ 90.00
25 iii. Paralegal	\$ 70.00

26 16. These rates are subject to change after notification to the Trustee;

27 17. For the foregoing and all other necessary and property purposes, Trustee Gerald H. Davis
28 proposes to retain the Law Offices of Shirlyn Daddario as its Special Counsel on an hourly basis

Ex Parte Application for Authority to Retain Special Counsel

1 pursuant to 11 USC §327. Further, the Trustee proposes that the Law Offices of Shirlyn Daddario
2 receive, if appropriate, interim compensation pursuant to 11 USC §331. No compensation will be paid
3 by Trustee Davis or any other person or entity for services rendered to the Trustee, except upon
4 application and entry of an order of the court authorizing payment to the Law Offices of Shirlyn
5 Daddario;

6 Wherefore, Trustee Gerald H. Davis prays that this Court will enter its order approving the
7 employment of the Law Offices of Shirlyn Daddario as its Special Counsel to render services in the
8 areas described above with compensation to be paid as an administrative expense in such amounts as
9 this Court may determine and allow.

10 Dated: April 26, 2010

11 

12
13 Gerald H. Davis, Trustee
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28